

25 CV 633

Revised 03/06 WDNV

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORKFORM TO BE USED IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983
(Prisoner Complaint Form)

All material filed in this Court is now available via the INTERNET. See Pro Se Privacy Notice for further information.

1. CAPTION OF ACTION

A. Full Name And Prisoner Number of Plaintiff: NOTE: If more than one plaintiff files this action and seeks in forma pauperis status, each plaintiff must submit an in forma pauperis application and a signed Authorization or the only plaintiff to be considered will be the plaintiff who filed an application and Authorization.

1. Robert L. Hernandez

2. _____

-VS-

B. Full Name(s) of Defendant(s) NOTE: Pursuant to Fed.R. Civ.P. 10(a), the names of all parties must appear in the caption. The court may not consider a claim against anyone not identified in this section as a defendant. If you have more than six defendants, you may continue this section on another sheet of paper if you indicate below that you have done so.

1. U.S. Marshalls

2. Prime Care

3. _____

4. _____

5. _____

6. _____

2. STATEMENT OF JURISDICTION

This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over the action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 2201.

3. PARTIES TO THIS ACTION

PLAINTIFF'S INFORMATION NOTE: To list additional plaintiffs, use this format on another sheet of paper.

Name and Prisoner Number of Plaintiff: Robert L. Hernandez 2023-00000937

Present Place of Confinement & Address: Niagara County Jail

5526 Niagara St Ext

Lock Port, NY 14095

Name and Prisoner Number of Plaintiff: _____

Present Place of Confinement & Address: _____

DEFENDANT'S INFORMATION NOTE: To provide information about more defendants than there is room for here, use this format on another sheet of paper.

Name of Defendant: U.S. Marshalls

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in ☐ Individual and/or ☒ Official Capacity

Address of Defendant: Office of General Counsel
OGC tort team Building G-63 15 floor Washington DC
20530-0001

Name of Defendant: Prime Care

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in ☐ Individual and/or ☒ Official Capacity

Address of Defendant: 3940 Locust Lane
Harrisburg, PA 17109

Name of Defendant: _____

(If applicable) Official Position of Defendant: _____

(If applicable) Defendant is Sued in ☐ Individual and/or ☐ Official Capacity

Address of Defendant: _____

4. PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

- A. Have you begun any other lawsuits in state or federal court dealing with the same facts involved in this action?
Yes ☐ No ☒

If Yes, complete the next section. NOTE: If you have brought more than one lawsuit dealing with the same facts as this action, use this format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. Court (if federal court, name the district; if state court, name the county): _____

3. Docket or Index Number: _____

4. Name of Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes ☐ No ☐

If not, give the approximate date it was resolved: _____

Disposition (check the statements which apply):

- ☐ Dismissed (check the box which indicates why it was dismissed):
- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
 - ☐ By court for failure to exhaust administrative remedies;
 - ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
 - ☐ By court due to your voluntary withdrawal of claim;
- ☐ Judgment upon motion or after trial entered for
- ☐ plaintiff
 - ☐ defendant

B. Have you begun any other lawsuits in federal court which relate to your imprisonment?

Yes ☐ No ☒

If Yes, complete the next section. NOTE: If you have brought more than one other lawsuit dealing with your imprisonment, use this same format to describe the other action(s) on another sheet of paper.

1. Name(s) of the parties to this other lawsuit:

Plaintiff(s): _____

Defendant(s): _____

2. District Court: _____

3. Docket Number: _____

4. Name of District or Magistrate Judge to whom case was assigned: _____

5. The approximate date the action was filed: _____

6. What was the disposition of the case?

Is it still pending? Yes ☐ No ☐

If not, give the approximate date it was resolved: _____

Disposition (check the statements which apply):

☐ Dismissed (check the box which indicates why it was dismissed):

- ☐ By court *sua sponte* as frivolous, malicious or for failing to state a claim upon which relief can be granted;
- ☐ By court for failure to exhaust administrative remedies;
- ☐ By court for failure to prosecute, pay filing fee or otherwise respond to a court order;
- ☐ By court due to your voluntary withdrawal of claim;

☐ Judgment upon motion or after trial entered for

- ☐ plaintiff
- ☐ defendant.

5. STATEMENT OF CLAIM

For your information, the following is a list of some of the most frequently raised grounds for relief in proceedings under 42 U.S.C. § 1983. (This list does not include all possible claims.)

- | | | |
|--------------------|------------------------|--------------------------------------|
| • Religion | • Access to the Courts | • Search & Seizure |
| • Free Speech | • False Arrest | • Malicious Prosecution |
| • Due Process | • Excessive Force | • <u>Denial of Medical Treatment</u> |
| • Equal Protection | • Failure to Protect | • Right to Counsel |

Please note that it is not enough to just list the ground(s) for your action. You must include a statement of the facts which you believe support each of your claims. In other words, tell the story of what happened to you but do not use legal jargon.

~~Fed.R.Civ.P. 8(a) states that a pleading must contain "a short and plain statement of the claim, showing that the pleader is entitled to relief." "The function of pleadings under the Federal Rules is to give fair notice of the claim asserted. Fair notice is that which will enable the adverse party to answer and prepare for trial, allow the application of res judicata, and identify the nature of the case so it may be assigned the proper form of trial." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995).~~

~~Fed.R.Civ.P. 10(b) states that "[a]ll averments of claim ... shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances."~~

Exhaustion of Administrative Remedies

Note that according to 42 U.S.C. § 1997e(a), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prison or confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

You must provide information about the extent of your efforts to grieve, appeal, or otherwise exhaust your administrative remedies, and you must attach copies of any decisions or other documents which indicate that you have exhausted your remedies for each claim you assert in this action.

A. FIRST CLAIM: On (date of the incident) April 28, 2023 - Now
 defendant (give the name and position held of each defendant involved in this incident) Federal
marshalls are refusing to give medical treatment

did the following to me (briefly state what each defendant named above did): _____

The constitutional basis for this claim under 42 U.S.C. § 1983 is: Denial of Medical Treatment
and Due Process

The relief I am seeking for this claim is (briefly state the relief sought): Medical Treatment
and monetary damage.

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☐ Yes ☒ No If yes, what was the result? _____

~~Did you appeal that decision? ☐ Yes ☐ No If yes, what was the result? _____~~

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so: _____

A. SECOND CLAIM: On (date of the incident) _____
 defendant (give the name and position held of each defendant involved in this incident) _____

did the following to me (briefly state what each defendant named above did):

The constitutional basis for this claim under 42 U.S.C. § 1983 is:

The relief I am seeking for this claim is (briefly state the relief sought):

Exhaustion of Your Administrative Remedies for this Claim:

Did you grieve or appeal this claim? ☐ Yes ☐ No If yes, what was the result?

Did you appeal that decision? ☐ Yes ☐ No If yes, what was the result?

Attach copies of any documents that indicate that you have exhausted this claim.

If you did not exhaust your administrative remedies, state why you did not do so:

If you have additional claims, use the above format and set them out on additional sheets of paper.

6. RELIEF SOUGHT

Summarize the relief requested by you in each statement of claim above.

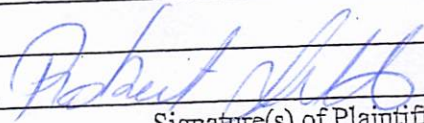
Medical Treatment for medical conditions
and \$100,000,000 for civil Rights violations

Do you want a jury trial? Yes ☒ No ☐

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
(date)

NOTE: *Each plaintiff must sign this complaint and must also sign all subsequent papers filed with the Court.*



Signature(s) of Plaintiff(s)

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008									
1. Submit to Appropriate Federal Agency: <i>Federal marshals office of General Counsel Washington DC 20530 0001 att OGA tort team. Building 663 15 Floor</i>			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. <i>Robert L Hernandez 5536 Niagara St Lockport NY 14095</i>										
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH <i>04.04.1973</i>	5. MARITAL STATUS <i>Single</i>	6. DATE AND DAY OF ACCIDENT	7. TIME (A.M. OR P.M.) <i>N/A</i>									
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). <div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px 0;"> PROPERTY DAMAGE </div> 9. NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). <i>NONE</i> BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side). <i>NONE</i>													
<div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px 0;"> PERSONAL INJURY/WRONGFUL DEATH </div> 10. STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. <i>Due process failed to protect cruel and unusual punishment</i>													
<div style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px 0;"> WITNESSES </div> 11. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <th style="width: 40%;">NAME</th> <th>ADDRESS (Number, Street, City, State, and Zip Code)</th> </tr> <tr> <td><i>N/A</i></td> <td><i>Niagara County Jail</i></td> </tr> </table>						NAME	ADDRESS (Number, Street, City, State, and Zip Code)	<i>N/A</i>	<i>Niagara County Jail</i>				
NAME	ADDRESS (Number, Street, City, State, and Zip Code)												
<i>N/A</i>	<i>Niagara County Jail</i>												
12. (See instructions on reverse). <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <th colspan="4" style="text-align: center; font-size: small;">AMOUNT OF CLAIM (In dollars)</th> </tr> <tr> <td style="width: 25%;">12a. PROPERTY DAMAGE</td> <td style="width: 25%;">12b. PERSONAL INJURY</td> <td style="width: 25%;">12c. WRONGFUL DEATH</td> <td style="width: 25%;">12d. TOTAL (Failure to specify may cause forfeiture of your rights). <i>1000000</i></td> </tr> </table>						AMOUNT OF CLAIM (In dollars)				12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights). <i>1000000</i>
AMOUNT OF CLAIM (In dollars)													
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights). <i>1000000</i>										
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.													
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). <i>Robert L Hernandez</i>			13b. PHONE NUMBER OF PERSON SIGNING FORM		14. DATE OF SIGNATURE								
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)										

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property:

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☐ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☒ No 17. If deductible, state amount.

NONE

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

NONE

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☒ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY.

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in Item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in Item number 12 of this form.

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. Authority: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2571 et seq., 28 C.F.R. Part 14.

B. Principal Purpose: The information requested is to be used in evaluating claims.

C. Routine Use: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. Effect of Failure to Respond: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Federal marshalls Office of General counsel attn. OGC tort team Building 663 15 floor		Washington DC 20530 0001		2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. Robert L Hernandez 5526 niagara St. Lockport NY 14095	
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 04-04-1978	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT 4-28-23	7. TIME (A.M. OR P.M.) N/A	
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). I been without adequate proper and non discriminatory medical treatment for 8 months I being denied my right to adequate medical care. US NYS medical staff and the US Marshall is aware of my debilitating life threatening medical condition I have Crohns Disease arthritis which is very severe and now I have Diabetes as well					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). N/A					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side). None					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. Faile to provide medical treatment do process					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
DR. Ho King Dana		68 York Ave New York Presbiteria Hospital N.Y. N.Y.			
12. (See instructions on reverse). AMOUNT OF CLAIM (In dollars)					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights).		
NONE	100.000000	NONE	100.000000		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). Robert L Hernandez		13b. PHONE NUMBER OF PERSON SIGNING FORM 212-203-9465		14. DATE OF SIGNATURE 11-15-23	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM		CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS			
The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).		Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)			



U.S. Department of Justice
United States Marshals Service
Office of General Counsel

Washington, DC 20530-0001

OCT 21 2024

CERTIFIED MAIL # 9589 0710 5270 2423 5337 42

Robert L. Hernandez, Reg. #56796-510
Cattaraugus County Jail
301 Court St.
Little Valley, NY 14755

Re: Administrative Tort Claim OGC #54720

Dear Mr. Hernandez:

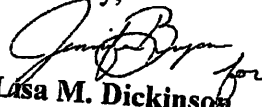
This responds to the above-referenced administrative tort claim received by the United States Marshals Service (USMS) on February 6, 2024, in the amount of \$1,000,000.00. You claim that on December 8, 2023, you were assaulted by a fellow inmate and have not received medical care.

The applicable provisions of the Federal Tort Claims Act [28 U.S.C. §§ 1346(b), 2401(b), 2671, *et seq.*] provide for the payment of claims which arise from the negligent or wrongful act or omission of an employee of the Federal Government while acting within the scope of his or her employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

Our review of the circumstances and the applicable law revealed no negligence on behalf of any USMS employee. Your allegations arise from the conditions of confinement while housed at a contract facility. The USMS entered into an Intergovernmental Agreement with Niagara County Jail to temporarily house federal detainees. In this regard, the daily safekeeping responsibility for federal prisoners housed at a local contract jail, to include medical care, rests with the jail. The independent contractor is the appropriate party to whom you should address your claim for damage allegedly caused by its employee. The United States is not liable under the Federal Tort Claims Act for acts or omissions of independent contractors. *See* 28 U.S.C. § 2671 and *Logue v. United States*, 412 U.S. 521 (1973).

Accordingly, your administrative tort claim against the United States in the amount of \$1,000,000.00 is denied. If you are dissatisfied with our determination, suit may be filed in the appropriate U.S. District Court no later than six months after the date of the mailing of this denial. *See* 28 U.S.C. § 2401(b).

Sincerely,


Lisa M. Dickinson
General Counsel